

Amended Complaint

1:13-CV-1106A

Revised 03/06 WDNV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORKFORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. **Full Name And Prisoner Number of Plaintiff:** NOTE: If more than one plaintiff files ~~in forma pauperis~~ and seeks to be considered will be the plaintiff who filed an application and Authorization.

1. Brian Smith 61750-019

2. _____

-VS-

B. **Full Name(s) of Defendant(s)** NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. William J. Hochstetler

4. Melissa Colley

2. Maria K. Odonnell

5. Cleophus J. Weeks

3. Unknown Willoughby Hills officer

6. Brendan M. Donlan

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION**PLAINTIFF'S INFORMATION** NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: Brian Smith 61750-019

Present Place of Confinement & Address: North East Correctional Facility, 2240
Hubbard Road Youngstown Ohio, 44505

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

Defendants

Sam Davis

Brandon Portis

Frank Lotempio 3:1

Walter Henigan

Theresa Davis

Joseph Burch

Myra Burch

Lisa Krollman

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: William J. Hochul
 (If applicable) Official Position of Defendant: U.S. attorney of Western District NY
 (If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity
 Address of Defendant: 138 Delaware Ave Buffalo, New York
14202

Name of Defendant: Maura K. O'Donnell
 (If applicable) Official Position of Defendant: Asst. U.S. attorney of Western District NY
 (If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity
 Address of Defendant: 138 Delaware Ave Buffalo, New York
14202

Name of Defendant: Brendan M. Donlan
 (If applicable) Official Position of Defendant: FBI agent
 (If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity
 Address of Defendant: 138 Delaware Ave Buffalo, New York
14202

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in **state or federal court** dealing with **the same facts involved in this action**?
 Yes ☒ No ☐

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): Brian Smith
 Defendant(s): William Hochul et al

2. Court (if federal court, name the district; if state court, name the county):

U.S. District Court, Northern District of Ohio

3. Docket or Index Number: 4:14-cv-00162-BYP

4. Name of Judge to whom case was assigned: Berita Y. Pearson

continued

Frank Fotempio 3rd

attorney

Sued individually and official capacity

201 Franklin Buffalo, N.Y. 14202

Walter Hennigan

Fire fighter

Sued individually and official capacity

Fire Dept, City Hall 2 Niagara Buffalo, N.Y. 14202

Theresa Davis

fire woman

sued individually and official capacity

Fire Dept, City Hall 2 Niagara Buffalo, N.Y. 14202

Joseph Burch

27 Sand hollow Road Getzville N.Y.

Myra Burch

27 Sand hollow Road Getzville N.Y.

Lisa Krollman

Bank Manager

sued in official capacity

Citizens Bank Tops Supermarket Elmwood Ave Bf10. N.Y.

Defendant's Information

Melissa Colley

United States Probation Officer

Sued individually and official capacity

United States Court House 2 Niagara Square Buffalo, New York
14202

Cleophas J. Weeks

United States Probation Officer Supervisor

Sued individually and official capacity

United States Court House 2 Niagara Square Buffalo, New York
14202

Unknown Willoughby Hills Police Officer

Willoughby Hills Police Officer

Sued individually and official capacity

Willoughby Hills Police Department, Willoughby Hills, Ohio

Sam Davis

Attorney

Sued individually and official capacity

301 Main Street Buffalo, N.Y. 14202

Brandon Portis

Attorney

Sued individually and official capacity

2 South Niagara, Family Court House Buffalo, N.Y. 14202

5. The approximate date the action was filed: 1/15/14

6. What was the disposition of the case?

Is it still pending? Yes ☒ No ☒

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

B. Have you begun **any other lawsuits in federal court** which **relate to your imprisonment**?

Yes _____ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include **all** possible claims.)

- | | | |
|----------------------|------------------------|---------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure ~ |
| • Free Speech | • False Arrest ~ | • Malicious Prosecution ~ |
| • Due Process ~ | • Excessive Force | • Denial of Medical Treatment ~ |
| • Equal Protection ~ | • Failure to Protect | • Right to Counsel ~ |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to **42 U.S.C. § 1997e(a)**, "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) September 30, 2011

defendant (give the **name and position held** of each defendant involved in this incident) Unknown

Villoughby Hills Police Officer

did the following to me (briefly state what each defendant named above did): The defendant allegedly

pulled the plaintiff over, for a traffic violation improper lane change.

The plaintiff disagrees. Defendant ask for license and registration plaintiff

provided valid credentials, Defendant suggested the windows were "rolled up and

the odor was very strong" It was raining outside 9/30/11. Defendant

detains the plaintiff in the rear of the police cruiser, searches the owners

car without permission or a warrant, calls a K-9 unit to search the car,

detains the defendant until the officer is able to verify my destination.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: 4th 5th 6th 8th 14th amendments

violations, as well as 42 U.S.C. 1985, due process, equal protection, search seizure

The relief I am seeking for this claim is (briefly state the relief sought): one million dollars

compensatory and punitive damages

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? Nothing

Did you appeal that decision? ☐ Yes ☐ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: I contacted the

Captain of the Police Dept. He made a note of the incident

A. SECOND CLAIM: On (date of the incident) March 2, 2012

defendant (give the **name and position held** of each defendant involved in this incident) Melissa L.

Colley U.S. Probation Officer, Cleophus J. Weeks Supervising

U.S. Probation Officer

First Claim (continued)

After searching the car, the defendant had dispatch confirm the plaintiff was purchasing a car.

After this long grueling process the plaintiff was issued a ticket for improper lane change and released from detention.

did the following to me (briefly state what each defendant named above did): On 3/2/12 and 2/21/12 with false information, Melissa Colley petitioned the court for both a summons and a warrant. The supervising officer reviewed and approved the false allegations. Melissa Colley signed under penalty of perjury that the allegations in the petition were true and correct when in fact she knew they were false. As a result of the probation officers perjury the plaintiff was detained

The constitutional basis for this claim under 42 U.S.C. § 1983 is: due process, equal protection, 14th and 5th amendment violations

The relief I am seeking for this claim is (briefly state the relief sought): access to entire probation file and one million dollars compensatory and punitive damages

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? I was told to contact my attorney by the head of probation

Did you appeal that decision? ☐ Yes ☒ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

I'm looking for atleast one million dollars per claim in SCAMP instances help.

Do you want a jury trial? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6/20/14
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

Breun A. Jones

Signature(s) of Plaintiff(s)

Third Claim

March 5, 2012

Frank Lotempio 3rd was a retained attorney for the plaintiff.

While incarcerated on a probation violation, the plaintiff was a target on an FBI agent along with another target Brandon Portis. Lotempio became aware on the investigation, did not inform the plaintiff. Lotempio also shared privileged information with Brandon Portis. When ultimately provided false testimony to the grand jury against the plaintiff. The U.S. attorney's office became aware of the scheme and made Lotempio no longer represent the plaintiff. Lotempio was specifically told not discuss my case with Portis.

The constitutional basis for this claim under 42 U.S.C. 1983 is 3rd, 6th, 8th, 14th amendment violations. right to counsel
In addition legal malpractice exists

- a) contract for professional services
- b) reliance by the plaintiff
- c) failure to exercise professional skill
- d) damage caused by that failure

The relief I am seeking for this claim: Compensatory and punitive damages One million dollars

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Fourth Claim

March 23, 2012

Sam Davis, Esq. was a retained attorney for the plaintiff; while incarcerated, (for) Mr. Davis was retained to facilitate both civil and criminal matters. Mr. Davis ultimately shared privilege information with Brandon Portis, Esq., the FBI, and the U.S. attorney's office. On November 6, 2013 Mr. Davis voluntarily appeared before a grand jury to discuss privilege discussions between myself and the defendant. Mr. Davis was told not to discuss matters with Portis.

The constitutional basis for this claim under 42 U.S.C. 1983 5th, 6th, 8th, 14th amendment violations. In addition legal malpractice exists, equal protection, right to counsel.

The relief I am seeking for this claim: Compensatory and punitive damages, one million dollars.

Fifth Claim

March 1st, 2012

The Plaintiff met defendant Brandon Poehs Esq. for dinner to discuss contracts that the plaintiff wanted with respect to certain business matters. The defendant was confident he would be able to draft the contracts if not he indicated he would enlist the help of another attorney Peter Haberler. During the dinner the defendant also indicated he was having financial difficulties with his business. He indicated he was required to come up with nine thousand dollars, as a result of a joint venture with his employer. The plaintiff offered to loan the defendant the money. The defendant was still in need of the funds after. The plaintiff was arrested for probation violations. The plaintiff provided the defendant the money he needed for his paint company, in addition the plaintiff provided the money he needed for retaining another attorney to assist the defendant with the contracts he was preparing for the plaintiff. The defendant became a target of the U.S. attorneys office. Cooperated with the FBI from March 27, 2012 until Nov 6, 2013 in which he provided false testimony to the grand jury.

The constitutional basis for this claim under 42 U.S.C 1983 is 5th 6th 8th 14th amendments amendment violations, In addition legal malpractice exists,

the defendant also participates into an extra-judicial conspiracy to deny the plaintiff a fair trial, due process and equal protection, right to counsel

The relief I'm seeking is three million dollars for compensatory and punitive damages.

Sixth Claim

March 28, 2012

Joseph Burch was a business partner, of the plaintiff

Who became a target of a federal investigation.

Mr. Burch provided false information to the FBI.

Mr. Burch continued to give false information regarding the investigation, he ultimately appear before a grand jury Nov 6, 2013 and provided information which he knew was false. As a result of the false information the U.S. attorney's office issued an indictment against the plaintiff in November of 2013.

The constitutional basis for this claim under 42 U.S.C. 1983 is 5th, 6th, 8th, 14th amendment violations, perjury to FBI, perjury to Grand jury, the defendant also participates into an extra-judicial conspiracy to deny the plaintiff a fair trial.

The relief I am seeking for this claim: compensatory and punitive damages one million dollars.

Seventh Claim

On November 6, 2013, Walter Hennigan appeared before the grand jury to testify with respect to a house his business partner and fellow live woman purchased. Mr. Hennigan provided false testimony to the grand jury. Mr. Hennigan misrepresented himself and the purchase to Mrs. Davis his business partner. As a result an indictment was pursued against the plaintiff, with counts charging the plaintiff as a result of Mr. Hennigan's misrepresentations.

The constitutional basis for this claim under 42 U.S.C. 1983 is 5th, 6th, 8th, 14th amendment violations, false statements to the FBI in both the Western District of New York and the Eastern District of MO., perjury to the grand jury, the defendant also participates into an extra-judicial conspiracy to deny the plaintiff a fair trial.

The relief I am seeking for this claim is:
Compensatory and punitive damages one million dollars

Eighth Claim

Theresa Davis, on November 6, 2013, stating that she was in a partnership with Walter Hennigan. To purchase multiple properties. She participated in the partnership because she trusted Mr. Hennigan. The properties that their partnership purchased didn't live up to her expectations. She ultimately signed a number of mortgages, where her employment and assets were misrepresented. She blames the plaintiff for the mortgage closings and the misrepresentations on the plaintiff. She articulates this all in front of the grand jury. The houses the defendant speaks of were in Atlanta, GA and Birmingham, Alabama. It should be noted the plaintiff was not involved or aware of the transaction in Alabama. The plaintiff never forced Mrs. Davis to sign mortgage documents. Ultimately the plaintiff is charged with mortgage fraud. Plaintiff never had any discussion with Davis to the facts mentioned.

The constitutional basis for this claim on 42 U.S.C. (1983) 5th 14th amendment violations, an extra-judicial conspiracy to deny the plaintiff a fair trial. The four elements of negligence are present in the instant case.

a) a duty or obligation, recognized by the law, requiring the actor to conform to a certain standard of conduct for the protection of others against unreasonable risks

b) a failure on their part to conform to the standard required

c) a reasonable close causal connection between the conduct and the resulting injury

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D. Actual loss or damage resulting to the interest of another

It should also be noted, since the properties were in Atlanta, GA. The court has jurisdiction in controversy exceeding 75,000. The two properties in question total over one million dollars.

The relief I am seeking for this claim is three million dollars compensatory and punitive damages.

Ninth Claim

Brendan M. Donlan FBI Agent for the Western District of New York

On April, 18th 2012 appeared before Magistrate Scott with false information, in a affidavit for an application for a warrant.

On November 6, 2013 agent Donlan appeared before the grand jury presented false information.

Sometime after August 1, 2011 and before August March 2, 2012. Agent Donlan contacted the plaintiff's probation officer to assist her and violating the plaintiff's probation. Melissa Gentry the plaintiff's probation officer filed a false petition, she violated (1423).

Brendan Donlan has participated in a conspiracy since March 28, 2012, when he received a statement from the target of an investigation, that contained a number of false statements. Thus preventing the plaintiff from getting a fair trial. Mr. Donlan allowed the false statements in the warrant.

Brendan Donlan allowed the false statements in front of the grand jury, furthering the conspiracy.

Brendan Donlan sometime after October 28, 2010 received information from the FBI, of St Louis Mo. In which the U.S. attorney's office in St Louis, indicated that the plaintiff was immune from said charges. Mr. Donlan proceeded to use the information ^{for the} current indictment. And ultimately represented to the U.S. attorney's office, the said information was obtained independently.

The FBI from the Eastern District of Missouri, flew to Buffalo to interview ~~the~~ Walter Hennigan and Theresa Davis with respect to a wire fraud case in St. Louis. During that interview information regarding mortgage fraud was discussed with both Hennigan and Davis. This interview took place in that last week of the month of February 2010.

The Plaintiff was arrested in the first week of March of 2010. The plaintiff pled guilty to wire fraud and was sentenced to five years probation in October of 2010. The plaintiff discussed with the government U.S. attorney and FBI issues related to the mortgage. My attorney in St. Louis was able to provide both grand jury testimony and FBI reports (St. Louis). That FBI and U.S. attorney had access too. They indicated they never reviewed such paperwork.

They also allege they weren't privy to promises of immunity from St. Louis. The plaintiff asserts such information was used against him as well as other information, the government in St. Louis was aware of and charge ~~him~~ the plaintiff for the conduct in the Western District of New York.

FBI agent Donlan has interviewed over seven witnesses who have given him false statements and perjured themselves in the grand jury allowing an extra judicial conspiracy to occur and prevent the plaintiff from receiving a fair trial. One example of the false statements; Joseph Burch indicated he provided the plaintiff with his 2010 federal taxes, in the summer of 2010. The court well knows that taxes are prepared after the end of the year. In fact Joseph Burch taxes are

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dated for March of 2011. There are a number of inconsistent statements throughout Joseph Butch's and other witness's grand jury testimony and statements that Mr. Donlan chooses not to verify.

Mr. Donlan has forwarded this information to the U.S. attorney, she has used the information in her responses to the plaintiffs pre-trial motions, that include suppression motions April 28, 2014

The constitutional basis for this claim under 42 U.S.C. 1983 is equal protection, due process, false arrest 14th, 5th amendment violations

The relief I'm seeking is one million dollars compensatory and punitive damages

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Tenth Claim

February 1, 2010 until April 4, 2012

Lisa Krallman acting as Bank Manager for Citizens Bank

Ms. Krallman in her official capacity as bank manager opened two business accounts for the plaintiff, Ms. Krallman assured the plaintiff that he was in compliance with all banking laws and Citizens Bank policies and regulations. On November 6, 2013 Ms. Krallman appeared before the grand jury indicating that the plaintiff was not in compliance with Federal law. The amounts exceed 75,000.00

The constitutional basis for this claim under 42 U.S.C. 1983 is negligence 14th 5th amendment violations.

The relief I am seeking for this claim is five million dollars compensatory and punitive damages

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Eleventh Claim

March 2, 2012 until present day
 William Hochul Jr. and Maureen O'Donnell acting in their official capacity, as U.S. attorney and ass. U.S. attorney have pursued charges against the defendant in such a malicious fashion the plaintiff is unable to receive a fair trial.

March 2, 2012 the U.S. attorney office pursues probation violation charges, in which they are aware that there's racial profiling by the Willoughby Hills Police Dept, see first claim, and there's perjury by the U.S. Probation Dept

June 7, 2012 the judge (Ancora) ask the U.S. attorney if she knows that "standard" of conviction of a probation violation, on record she indicates she does not know. The plaintiff is detained in Federal custody and the Government doesn't know the standard on conviction. It appears in the transcript

Sept 2012 the plaintiff takes a plea with respect to a probation violation and is prepare to get sentenced in September upon sentencing. The government provides Judge Ancora with a criminal complaint. Not allowing the plaintiff to get sentence.

April 27, 2014 Herbert Greenman Esq files pretrial motions on the plaintiffs behalf. The government Maureen O'Donnell in particular provides false information to Honorable Kenneth Schröder with respect, to warrant applications

False witness statements, perjury with respect to the grand jury, and breach of contract with respect to immunity out of the U.S. attorneys office in St. Louis.

Hochul and O'Donnell have participated into an extra-judicial conspiracy to convict the plaintiff. The government's witnesses in many cases have perjured themselves. They include Brandon Portis Esq, Theresa Davis, Walter Hennigan and Joseph Burch as well as Todd MacLin. The FBI and U.S. attorneys office have withheld exculpatory material from the plaintiff. The FBI and U.S. attorney have relied on evidence in which they know is untrue.

The constitutional basis for this claim under 42 U.S.C. 1983, is 4th, 5th, 6th, 8th, 14th amendment violations due process, equal protection, search seizure, right to counsel. The relief I am seeking for this claim is ten million dollars compensatory and punitive damages.